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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-5243

JAMES T. ANDERSON,
PETITIONER,

v.

EDWARD FRODERMAN et al.,
RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

PETITION NOT PRINTED

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Opinions Below

The memorandum and judgment of the United States Court of Appeals for the First Circuit, dated May 8, 1973, is not reported and is set forth in Appendix A. The order of the District Court is not reported and is set forth in an Appendix to the Petition.

Questions Presented

Did the Commonwealth of Massachusetts violate the petitioner's federal or constitutional rights when the Chief Justice of the Massachusetts Superior Court rescheduled an assigned trial date of a civil action the petitioner had pending in State Court?

Statutory Provisions Involved

ELEVENTH AMENDMENT OF THE UNITED STATES CONSTITUTION:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

UNITED STATES CODE:

Title 42, § 1983

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Title 42, § 1985

> . . . (2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat,

any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Con-

gress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

Title 28, U.S.C. § 1343

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

RULES OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT:

Rule 12:

"At any time, on such notice as the court may order, on motion of appellee, or sua sponte, the court may dismiss the appeal or other request for relief or affirm and enforce the judgment or order below if the court lacks jurisdiction, or if it shall clearly appear that no substantial question is presented. In case of obvious manifest error the court may, similarly reverse. Motions for such relief should be promptly filed when the occasion appears, and must be accompanied by four copies of a memorandum or brief.

"If the court concludes, after adequate opportunity for briefing, that even though there may be a substantial question, oral argument would not assist it, the Clerk will so advise counsel. No such conclusion will be reached unless the three judges, who will have examined the briefs, are unanimous in so concluding."

Statement

Petitioner brings this action against the Commonwealth of Massachusetts seeking civil rights damages under Titles 42, U.S.C. §§ 1983, 1985(2), (3) and 28, U.S.C. § 1343.

The petitioner alleges that his constitutional and federal rights were allegedly violated by the Commonwealth of